5-1-2009

State v. Mantz Respondent's Brief Dckt. 35540

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

TIM CARL MANTZ,

Defendant-Appellant.

NO. 35540

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

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STATEMENT OF THE CASE

Nature Of The Case

Tim Carl Mantz appeals from the judgment of conviction entered after a jury found him guilty of aggravated assault. Specifically, he claims the district court should not have allowed his victim's preliminary hearing testimony to be entered into evidence at his jury trial after his victim became unavailable due to his death.

Statement Of Facts And Course Of Proceedings

Mantz was charged with aggravated assault. (R., pp.22-23.) The complaint alleged Mantz fired a handgun near Karl Hoidal's head and verbally threatened him. (R., pp.15-18.) Mantz made his initial appearance before a magistrate on April 2, 2007, and his preliminary hearing was scheduled for April 13, 2007. (R., pp.26, 29.) Pursuant to a stipulation by the parties, the preliminary hearing was continued until June 7, 2007, to allow for full discovery and adequate time to prepare. (R., pp.36-38.) By April 17, 2007, the state had provided discovery including 138 pages of reports and documentation and 4 CDs. (R., pp.40-47.) A few additional documents were provided by the state by May 15, 2007, including a lab report and a few supplemental reports and statements regarding prior incidents involving the defendant, but the bulk of the discovery was provided to Mantz by April 17, 2007, almost two months before the preliminary hearing. (R., p.161.)

Karl Hoidal testified at the preliminary hearing as one of the state's witnesses, and was subject to direct examination, cross-examination, re-direct

examination and re-cross-examination. (P.H. Tr., pp.13-85.) At the close of evidence, Mantz was bound over as charged. (R., pp.52, 58-61.) A jury trial was scheduled for October 29, 2007. (R., p.69.)

On September 25, 2007, Karl Hoidal died in an automobile accident. (R., p.157.) The state filed a motion in limine asking the district court to admit Karl's preliminary hearing testimony at trial. (R., pp.157-171.) Mantz filed a brief in opposition to the state's motion in limine (R., pp.184-203), and his own motion in limine asking the court to prohibit the admission of the same testimony (R., pp.204-206). The district court granted the state's motion in limine, allowing Karl's preliminary hearing testimony to be admitted at trial. (R., pp.225, 252-255; 11/1/07 Tr., p.164, Ls.3-24.)

At the jury trial, the audio recording of Karl's preliminary hearing testimony was played for the jury, and while the jury was permitted to follow along with a copy of the transcript, the jury was not permitted to take a copy of the transcript back to the jury room. (Trial Tr., p.412, L.22 – p.414, L.21.) After the jury found Mantz guilty of aggravated assault, the district court entered a judgment of conviction and Mantz filed this timely appeal. (R., pp.366, 445-448, 455-457.)

ISSUES

Mantz states the issues on appeal as:

1. Whether the Confrontation Clause of the Sixth Amendment to the United States Constitution prohibits the State from introducing into evidence in its case in chief at a criminal trial the preliminary hearing testimony of an unavailable witness.

2. Whether Article I, Section 13, of the Idaho Constitution prohibits the State from introducing into evidence in its case in chief at a criminal trial the preliminary hearing testimony of an unavailable witness.

(Appellant's brief, p.5.)

The state wishes to rephrase the issues on appeal as:

Has Mantz failed to carry his burden of showing that the district court violated Mantz's confrontation rights when it admitted the preliminary hearing testimony of Karl Hoidal where Mantz had the opportunity to cross-examine Karl at the preliminary hearing and where Karl had become unavailable due to his death?

ARGUMENT

Mantz Has Failed To Establish The District Court Violated His Confrontation Rights When It Admitted The Preliminary Hearing Testimony Of Karl Hoidal

A. Introduction

Mantz claims the district court violated his rights under the Confrontation Clause when it admitted Karl Hoidal's preliminary hearing testimony at trial. (Appellant's brief, pp.6-23.) Specifically, Mantz argues that "The Confrontation Clause ... prohibits the State from introducing into evidence in its case in chief ... the preliminary hearing testimony of an unavailable witness." (Appellant's brief, p.6.) Mantz argues that this blanket prohibition is mandated by the United States Supreme Court's decision in Crawford v. Washington, 541 U.S. 36 (2004) (an out of court statement made to law enforcement was testimonial and thus could not be admitted at trial the witness was unavailable to testify, and the defendant had a prior opportunity for cross-examination). Because the Supreme Court's decision in Crawford in fact supports the opposite conclusion, Mantz's claim fails.

B. Standard Of Review

"Constitutional issues are questions of law subject to free review by this Court." State v. Weber, 140 Idaho 89, 91, 90 P.3d 314, 316 (2004).

C. Crawford Supports The Admission Of Testimony Obtained At A Preliminary Hearing

The decision of the United States Supreme Court in Crawford v. Washington does not mandate a blanket prohibition against the admission of preliminary hearing testimony at a criminal trial. In fact, the opinion itself leads to

the opposite conclusion: that a preliminary hearing provides an accused with his earliest opportunity to confront the witnesses against him and test their statements through the crucible of cross-examination. The admission of preliminary hearing testimony by a witness who later becomes unavailable does not offend the Confrontation Clause. Mantz's claim otherwise finds no support in the very authority he relies on.

The Court in Crawford was concerned with determining whether the admission of an out-of-court statement at Crawford's trial violated his Sixth Amendment right to confront the witnesses against him, where the statement of a witness to law enforcement was admitted pursuant to the trial court's finding that the circumstances and content of the statement bore adequate indicia of reliability or guarantees of trustworthiness. Crawford, 541 U.S. at 42. In resolving this question, the Court reflected on several centuries of jurisprudence in an effort to make clear the purpose and scope of protection of the Confrontation Clause. Crawford, 541 U.S. at 43-50.

Based on its review of these several cases, the Court concluded "history supports two inferences about the meaning of the Sixth Amendment": (1) that the primary evil at which the Clause is aimed is the government's gathering of ex parte evidence with the purpose of using that evidence at a later trial, Crawford, 541 U.S. at 50, and (2) that "the Framers would not have allowed admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify and the defendant had had a prior opportunity for cross-examination" Crawford, 541 U.S. at 53-54.

To that end, the Court overruled its prior decision in Ohio v. Roberts, 448 U.S. 56 (1980), which had allowed the admission of statements by an unavailable witness so long as they bore adequate indicia of reliability or guarantees of trustworthiness, and instead held that the Confrontation Clause prevents the government from using evidence of out-of-court testimonial statements unless the declarant is unavailable and the defendant has had the prior opportunity for cross-examination. Crawford, 541 U.S. at 59. In doing so, the Court explained that the Confrontation Clause provides a procedural, not a substantive guarantee. Crawford, 541 U.S. at 61. "It commands, not that evidence be reliable, but that reliability be tested in a particular manner: by testing it in the crucible of cross-examination." Crawford, 541 U.S. at 61. Mantz claims that it is this finding that now mandates a blanket prohibition against preliminary hearing testimony. (Appellant's brief, pp.9-22.) The Court in Crawford would disagree.

The Court noted that its case law had "been largely consistent" with the two principles underlying the Confrontation Clause. Crawford, 541 U.S. at 57. Discussing Mattox v. United States, 156 U.S. 237 (1895), it noted that the defendant had, at the first trial, an adequate opportunity to confront the witness, and that the constitutional protection is grounded in the "advantage" of "seeing the witness face to face, and of subjecting him to the ordeal of cross-examination." Mattox, 156 U.S. at 244. The Crawford Court expressly allowed for the probability that preliminary hearing testimony would meet this requirement: "Our later cases conform to *Mattox's* holding that prior trial or

preliminary hearing testimony is admissible only if the defendant had an adequate opportunity to cross-examine." Crawford, 541 U.S. at 57, *citing* California v. Green, 399 U.S. 149 (1970). This statement expressly allows for the possibility, of not probability, that the circumstances of a preliminary hearing would provide a defendant an adequate opportunity to cross-examine the witness. In Green, the Court concluded that the Confrontation Clause is not violated by admitting a declarant's out of court statements, as long as the declarant is testifying as a witness and subject to full and effective cross-examination. Green, 399 U.S. at 158. The Court then noted with approval its holding in Barber v. Page, 390 U.S. 719 (1968), where the preliminary hearing testimony of a witness was admitted at trial. Crawford, 541 U.S. at 57. In that case the defendant had had an opportunity for cross-examination and had waived it, but the testimony was disallowed because the government had not established the witnesses unavailability. Barber, 390 U.S at 722-23.

That Crawford overruled Ohio v. Roberts can hardly be seen as a condemnation of the use of preliminary hearing testimony, as suggested by Mantz. In fact, the opposite is true. Even as it overruled Roberts' use of the "indicia of reliability" standard, it approved of the resulting admission of preliminary hearing testimony: "Even our recent cases, *in their outcomes*, hew closely to the traditional line. *Ohio v. Roberts*, 448 U.S., at 67-70, 100 S.Ct. 2531, admitted testimony from a preliminary hearing at which the defendant had examined the witness." Crawford, 541 U.S. at 58 (emphasis supplied).

In short, nothing in Crawford suggests a retreat from the Court's prior allowance of the admission of preliminary hearing testimony.

D. Mantz's Argument Pursuant To The Idaho Constitution Should Not Be Considered By The Court On Appeal

Mantz asks the Court to find that Article I, Section 13 of the Idaho Constitution also prohibits the admission at trial of preliminary hearing testimony by a witness who has since become unavailable. (Appellant's brief, pp.23-24.) This argument should not be considered the Court on appeal, because Mantz has provided no argument or authority in support of his claim, State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996) ("A party waives an issue cited on appeal if either authority or argument is lacking, not just if both are lacking."), and because Mantz did not raise these independent grounds before the trial court (R., pp.184-202). Generally, failure to raise an issue in the district court, therefore denying the trial court the opportunity to rule on the alleged error, constitutes waiver of that issue on appeal. State v. Martin, 119 Idaho 577, 579, 808 P.2d 1322, 1324 (1991). This rule prohibits an appellant from claiming, for the first time on appeal, that the Idaho Constitution grants greater rights than the federal constitution. State v. Wheaton, 121 Idaho 404, 407-08, 825 P.2d 501, 503-04 (1992); State v. Palmer, 138 Idaho 931, 935, 71 P.3d 1078, 1082 (Ct. App. 2003).

CONCLUSION

The state respectfully asks this Court to affirm the judgment of conviction entered after a jury found Mantz guilty of aggravated assault.

DATED this 1st day of May, 2009.

Rebekah A. Cudé
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of May, 2009, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

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RAC/pm